

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Bill Underwood/797-1050

SUBJECT: Resolution

AFFECTED DISTRICT: n/a

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT FOR LEGAL SERVICES BETWEEN THE TOWN OF DAVIE AND CHITWOOD & HARLEY, LLP TO PROVIDE ADVICE AND REPRESENTATION ON SECURITIES LITIGATION AND PROVIDING AN EFFECTIVE DATE.

REPORT IN BRIEF: This resolution is to engage a law firm which specializes in securities litigation. From time to time the Town needs an attorney with specific securities litigation expertise. The firm of Chitwood & Harley, LLP has been identified as a firm possessing such expertise. By authorizing the use of this firm on an as needed basis, future securities matters should be able to be resolved more expeditiously as the Town will have an established firm in place to provide advice and representations.

PREVIOUS ACTIONS: Not applicable.

CONCURRENCES: The Town Administrator, Assistant Town Administrator, Budget and Finance Director and Town Attorney all concur on this request.

FISCAL IMPACT:

Has request been budgeted? N/A

If yes, expected cost:

Account Name:

Additional Comments: The firm works on a contingent fee basis and will be paid a percentage of any successful litigation awards as described in the engagement letter attached to the resolution.

RECOMMENDATION(S): Motion to approve the resolution.

Attachment(s):

Resolution

Exhibit "A," Memorandum-Town Attorney

Exhibit "B" Engagement letter

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT FOR LEGAL SERVICES BETWEEN THE TOWN OF DAVIE AND CHITWOOD & HARLEY, LLP TO PROVIDE ADVICE AND REPRESENTATION ON SECURITIES LITIGATION COUNSEL AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Davie, desires to engage Chitwood & Harley LLP to provide advice and representation on monitoring, evaluation, litigation and claims processing services for securities litigation, and

WHEREAS, it is in the best interest of both parties to execute an agreement for specialized services.

NOW, THEREFORE, be it resolved by the Town Council of the Town of Davie, Florida,

SECTION 1. The Town Council hereby authorizes the Mayor to execute an Engagement Letter with Chitwood & Harley, LLP for their services as Securities Litigation Attorney, attached hereto as Exhibit "A".

SECTION 2. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2004.

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2004

EXHIBIT "A"

MONROE D. KIAR
TOWN ATTORNEY
TOWN OF DAVIE
6191 SW 45th Street, Suite 6151A
Davie, Florida 33314
(954) 584-9770

MEMORANDUM

DATE: May 13, 2004

TO: Bill Underwood, Budget and Finance Director

CC: Mayor and Councilmembers
Tom Willi, Town Administrator

FROM: Monroe D. Kiar, Town Attorney

RE: 401(a) & 457 Investment Attorney
Control Number: 040402

As per your request, this office has reviewed the revised letter of engagement provided by Chitwood & Harley, LLP. Upon review of the revisions made by the firm, it is noted that the engagement letter now contains a provision allowing the fund to terminate the agreement and a provision prohibiting the firm from selling or otherwise conveying sensitive information obtained from the fund. Accordingly, the agreement appears to be in satisfactory form.

CHITWOOD & HARLEY, LLP

ATTORNEYS AT LAW
2800 PROMENADE II
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ATLANTA, GEORGIA 30309

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² ALSO ADMITTED IN NY, NJ, CO, DC
³ ALSO ADMITTED IN NY
⁴ ADMITTED IN MA ONLY
⁵ ADMITTED IN MI ONLY

OF COUNSEL
ROBERT S. KAHN
BARA JONES BIDEEN¹

May 3, 2004

Mr. William F. Underwood, II, Director
Budget & Finance Department
Town of Davie, Florida
6591 Orange Drive
Davie, FL 33314-3399

Dear Mr. Underwood:

This letter will serve as the official agreement between the Town of Davie Retirement Fund ("the Fund") and Chitwood & Harley, LLP ("Chitwood & Harley") relating to securities litigation counsel. Effective upon the date signed below, Chitwood & Harley is hereby appointed securities litigation counsel to the Fund. As securities litigation counsel, Chitwood & Harley will provide monitoring, evaluation, litigation and claims processing services as detailed below.

Monitoring Services for the Fund

As monitoring counsel, Chitwood & Harley will:

1. Review all of the Fund's holdings for the past three years to identify which securities are the subject of active securities litigation;
2. Provide the Fund with a report reflecting which holdings are the subject of securities litigation within 120 days of receiving the Fund's transactional data from its custodial bank; and,
3. Notify the Fund of any new cases which relate to its holdings on a rolling basis.

The service is solely and exclusively for the internal use of the Fund. The Fund shall not sell, transfer, assign, publish, distributed, disseminate or convey any of the data to any other person or organization. Likewise, Chitwood & Harley agrees to maintain all data provided by the

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Fund as confidential and shall not sell, transfer, assign, publish, distributed, disseminate or convey any of the Data provided by the Fund or its agents to any other person or organization. This Agreement shall not be deemed to prohibit use of the data in the normal internal business of the Fund.

The Fund will provide a copy of this Agreement, along with the specifications detailed in Exhibit A, to its custodial bank within one week of executing this Agreement. In doing so, the Fund authorizes its custodial bank to promptly provide Chitwood & Harley with the Fund's transaction data for the past three years and to provide Chitwood & Harley additional transactional data not less than one time per quarter.

Evaluation Services for the Fund

Chitwood & Harley will work with the Fund to create a set of guidelines for determining the types of cases the Fund will consider for active participation. Generally, these discussions will address a minimum dollar threshold of losses (i.e., damages), issues relating to liability, and a plan for gaining authorization to file on behalf of the Fund. Once these procedures are in place, Chitwood & Harley will use the information obtained through its monitoring program to evaluate and present cases of interest to the Fund.

Ordinarily, Chitwood & Harley will provide the Fund with a detailed "Q&A" regarding cases wherein the Fund has significant holdings prior to the end of the 60 day period in which a fund has to decide if it will take a leadership role in a particular case. The firm will also provide the Fund with guidance as to which level of participation is appropriate for that particular case. Once data is provided regarding a case that effects the Fund, lawyers from Chitwood & Harley will meet with the appropriate persons to discuss the Fund's participation.

Litigation Services Offered by Chitwood & Harley

In the event that the Fund chooses to pursue a case evaluated and presented by Chitwood & Harley, the firm will act as counsel for the Fund in such litigation.

Claims Processing

Chitwood & Harley will provide the Fund with monthly Settlement Updates, which reflect all recently settled securities class actions, and will work directly with the Fund's custodial bank

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and/or money managers to ensure that all claims are properly processed. We will provide the Fund with an annual report showing collections from securities class action cases in the first 30 days of each year.

Fee Proposal

Precedent and the Private Securities Litigation Reform Act of 1995 have established that in federal securities class action litigation, the court awards attorneys' fees and reimbursement of expenses to class counsel only when and if the litigation is successfully concluded and after considering several factors, including the number of hours spent, the result achieved, and the complexity of the matter. The fees are paid by the defendants and are usually measured as a percentage of the recovery. Chitwood & Harley will discuss any fee application with the Fund prior to submitting it to the Court. The firm typically requests the benchmark fee in the circuit in which the action is pending. Under the law, the benchmark merits adjustment in certain circumstances which we would also take into account and explain to you on a case by case basis.

Likewise, expenses are reimbursed only from a recovery funded by the defendant(s), and in the event that there is no recovery, the Fund has no responsibility for reimbursing expenses at all. Moreover, in any class action we undertake on behalf of the Fund, Chitwood & Harley will indemnify the Fund in the very unlikely event that there could be counterclaims or sanctions that result from the Fund serving or seeking to serve as lead plaintiff. Thus, the Fund will have no out-of-pocket expenditures or risk whatsoever for any such litigation. Other than as set forth in the foregoing "fee proposal" section and for cases in which the Board specifically approves Chitwood & Harley as Agency litigation counsel, the Fund will not be charged any fees, costs, or expenses of any kind by Chitwood & Harley for the Monitoring, Evaluation, and/or Claims Processing Services described above.

This agreement shall be for a term of one year, commencing May 1, 2004 through April 30, 2005. This agreement may be renewed annually by mutual written notice by both parties. Either party may give thirty (30) days written notice of cancellation of this agreement to the other by certified mail, return receipt delivered to: (1) Nikole Davenport for Chitwood & Harley; and (2) William F. Underwood, II for the Fund.

We appreciate the opportunity to be of service and look forward to working closely with the Fund. Please sign below on behalf of the Board of Trustees for the Fund, maintain a copy for your records and return a signed copy to Chitwood & Harley. So that separate letters of representation are not necessary in connection with every case or potential case we evaluate,

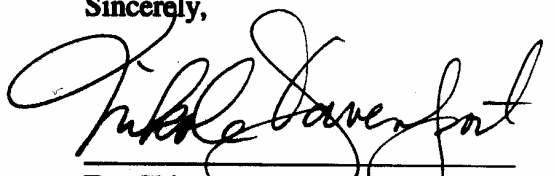
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monitor or handle for the Fund, this letter, absent modification, shall govern our representation unless otherwise agreed.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Davenport", written over a horizontal line.

For Chitwood & Harley, LLP

William F. Underwood, II

City of Davie

Dated: _____

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